

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
DAMON JONES, on behalf of himself and all others :
similarly situated, :

Plaintiff, :

-v- :

MILLER INTERNATIONAL, INC., :

Defendant. :
:
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23-CV-5066 (JMF)

ORDER

JESSE M. FURMAN, United States District Judge:

On August 25, 2023, Defendant filed a motion to dismiss the complaint under Rule 12(b) of the Federal Rules of Civil Procedure. Defendant argues in part that “Plaintiff’s claims are moot because . . . [a]t the time Plaintiff visited the Website, the Website was 100% [] compliant” with the relevant laws. ECF No. 15, at 9. The Court denied motions to dismiss raising similar arguments in *Romero v. Adagio Teas, Inc.*, No. 20-CV-7422, ECF No. 39, at 3-6 and *Jaquez v. Dorm Company Corp.*, No. 21-CV-2431, ECF No. 21, at 1. If, in light of those decisions, Defendant wishes to continue pressing its motion to dismiss in this case, the parties should address the impact, if any, of the Court’s decisions in their forthcoming motion papers.

Under Rule 15(a)(1)(B), a plaintiff has twenty-one (21) days after the service of a motion under Rule 12(b) to amend the complaint once as a matter of course. Accordingly, it is hereby ORDERED that Plaintiff shall file any amended complaint by **September 18, 2023**. Pursuant to Paragraph 1.B. of the Court’s Individual Rules and Practices in Civil Cases, available at <https://nysd.uscourts.gov/hon-jesse-m-furman>, any amended complaint should be filed with a redline showing all differences between the original and revised filing. Plaintiff will not be given any further opportunity to amend the complaint to address issues raised by the motion to dismiss.

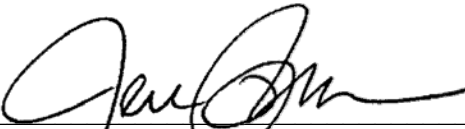
If Plaintiff does amend, by three (3) weeks after the amended complaint is filed, Defendant shall: (1) file an answer; (2) file a new motion to dismiss; or (3) file a letter on ECF stating that it relies on the previously filed motion to dismiss. If Defendant files an answer or a new motion to dismiss, the Court will deny the previously filed motion to dismiss as moot. If Defendant files a new motion to dismiss or indicates that it relies on its previously filed motion to dismiss, any opposition shall be filed within fourteen days, and any reply shall be filed within seven days of any opposition.

If no amended complaint is filed, Plaintiff shall file any opposition to the motion to dismiss by **September 18, 2023**. Defendant’s reply, if any, shall be filed by **September 25, 2023**.

Finally, it is further ORDERED that the initial pretrial conference previously scheduled for September 27, 2023 is adjourned *sine die*.

SO ORDERED.

Dated: August 28, 2023
New York, New York



JESSE M. FURMAN
United States District Judge